

State of Arizona  
Senate  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 179

## **SENATE BILL 1399**

AN ACT

AMENDING SECTIONS 32-1132, 32-1134, 32-1134.01, 32-1136, 32-1139, 32-1152 AND 32-1154, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 10, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1158.01; RELATING TO THE RESIDENTIAL CONTRACTORS' RECOVERY FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1132, Arizona Revised Statutes, is amended to  
3 read:

4 32-1132. Residential contractors' recovery fund

5 A. The residential contractors' recovery fund is established, to be  
6 administered by the registrar, from which any person injured by an act,  
7 representation, transaction or conduct of a residential contractor that is  
8 in violation of this chapter or the rules adopted pursuant to this chapter  
9 may be awarded in the county where the violation occurred an amount of not  
10 more than twenty THIRTY thousand dollars for damages sustained by the act,  
11 representation, transaction or conduct. An award from the fund is limited  
12 to the actual damages suffered by the claimant as a direct result of the  
13 contractor's violation but shall not exceed an amount necessary to complete  
14 or repair a residential structure or appurtenance within residential property  
15 lines. If the claimant has paid a deposit or down payment and no actual work  
16 is performed or materials are delivered, the award of actual damages shall  
17 not exceed the exact dollar amount of the deposit or down payment plus  
18 interest at the rate of ten per cent a year from the date the deposit or down  
19 payment is made or not more than twenty THIRTY thousand dollars, whichever  
20 is less. Interest shall not be paid from the fund on any other awards under  
21 this chapter unless ordered by a court of competent jurisdiction. An award  
22 from the fund shall not be available to persons injured by an act,  
23 representation, transaction or conduct of a residential contractor whose  
24 license was in an inactive status, expired, cancelled, revoked or suspended  
25 at the time of the contract. No more than the maximum individual award from  
26 the fund shall be made on any individual residence or to any injured person.  
27 Notwithstanding any other provision of law, monies in the RESIDENTIAL  
28 contractors' recovery fund shall not be directly awarded for attorney fees  
29 or costs except in contested cases appealed to the superior court.

30 B. Except as provided in section 32-1152, subsection C, every person  
31 making application for a contractor's license or for renewal of a  
32 contractor's license to engage in residential contracting shall pay an  
33 assessment of not more than six hundred dollars during the biennial license  
34 period for deposit in the fund. In the event that the registrar does not  
35 issue the license, this assessment shall be returned to the applicant.

36 Sec. 2. Section 32-1134, Arizona Revised Statutes, is amended to read:

37 32-1134. Powers and duties of registrar

38 A. The registrar shall:

39 1. Maintain the fund at a minimum level of one TWO hundred thousand  
40 dollars.

41 2. Fix assessments basing such assessments on an actuarial projection  
42 of anticipated claims and an anticipated annual inflation rate of ten per  
43 cent.

44 3. Establish claim reserves based on the incurral date of claims and  
45 an earned basis of income.

1 4. Cause an examination of the fund to be made every three years.

2 5. File with the department of insurance an annual statement of the  
3 condition of the fund, prepared in accordance with generally accepted  
4 accounting principles and showing claim reserves.

5 6. Employ accountants and attorneys from monies in the fund, but not  
6 to exceed ten thousand dollars in any fiscal year, that are necessary for the  
7 performance of the duties prescribed in this section.

8 7. Employ or contract with individuals and procure equipment and  
9 operational support, to be paid from or purchased with monies in the fund,  
10 but not to exceed ten per cent of the fund in any fiscal year as may be  
11 necessary to monitor, process or oppose claims filed by injured persons which  
12 may result in collection from the recovery fund.

13 B. Notwithstanding section 32-1135, the registrar may expend interest  
14 monies from the fund to increase public awareness of the fund. This  
15 expenditure shall not exceed fifty thousand dollars in any fiscal year.

16 Sec. 3. Section 32-1134.01, Arizona Revised Statutes, is amended to  
17 read:

18 32-1134.01. Additional payments to fund

19 If at any time the balance remaining in the residential contractors'  
20 recovery fund is less than ~~one~~ TWO hundred thousand dollars, every  
21 residential contractor who paid into the fund pursuant to section 32-1132  
22 shall be reassessed in an amount determined by the registrar pursuant to  
23 section 32-1134 and shall make the required payment into the fund. The  
24 registrar shall suspend a residential contractor's license for failure to  
25 make the required payment until the amount owed is paid in full.

26 Sec. 4. Section 32-1136, Arizona Revised Statutes, is amended to read:

27 32-1136. Statute of limitations; recovery from fund

28 A. An action for a judgment which may subsequently result in an order  
29 for collection from the fund shall not be commenced later than two years from  
30 the date of the commission of the act by the contractor that is the cause of  
31 the injury or from the date of occupancy. When any injured person commences  
32 action for a judgment which may result in collection from the fund, the  
33 injured person shall notify the registrar in writing to this effect at the  
34 time of the commencement of the action. The registrar may at any time  
35 intervene in and defend any such action.

36 B. When any injured person recovers a valid judgment against any  
37 residential contractor for such act, representation, transaction or conduct  
38 which is in violation of this chapter or the rules adopted pursuant to this  
39 chapter, ~~which occurred on or after July 1, 1981,~~ the injured person may on  
40 twenty days' written notice to the registrar apply to the court for an order  
41 directing payment out of the fund, of the amount unpaid on the judgment,  
42 subject to the limitations stated in this article. If the injured person  
43 failed to give notice to the registrar at the time of commencement of the  
44 action as required by subsection A of this section, the court may direct  
45 payment out of the fund upon receipt of a consent to payment signed on behalf

1 of the registrar. If the injured person has given notice to the registrar  
2 as required by subsection A of this section, the court may direct payment out  
3 of the fund either on receipt of a consent to payment signed on behalf of the  
4 registrar or, in the absence of any written consent, after the notice period  
5 required by subsection B of this section. If the court receives written  
6 objections by the registrar, the court shall not direct payment from the fund  
7 without affording the registrar a reasonable opportunity to present and  
8 support his objections.

9 C. The injured person shall not be the spouse of the residential  
10 contractor or the personal representative of the spouse of the residential  
11 contractor.

12 D. The court shall proceed on an application in a summary manner and,  
13 on the hearing, the injured person is required to show that he:

14 1. Has given notice as required by subsections A and B of this  
15 section.

16 2. Has obtained a judgment which has become final, as provided in  
17 subsection B of this section, stating the amount and the amount owing at the  
18 date of the application.

19 3. Has proceeded against any existing bond covering the residential  
20 contractor and has not collected upon such bond an amount of twenty THIRTY  
21 thousand dollars or more, except when the award is made pursuant to  
22 SUBSECTION E OF THIS SECTION OR section 32-1154.

23 4. Is not aware of any personal or real property or other assets of  
24 the debtor which can be applied in satisfaction of the judgment.

25 E. The court shall make an order directed to the registrar requiring  
26 payment from the fund of whatever sum it finds to be payable on the claim,  
27 in accordance with this section, if the court is satisfied on the hearing of  
28 the truth of all matters required to be shown by the injured person by  
29 subsection D of this section. The recovery limits established under this  
30 article apply to all judgments awarded after August 1, 1994 SEPTEMBER 1,  
31 2002. If the injured person has recovered a portion of his loss from sources  
32 other than the fund ~~in an amount of twenty thousand dollars or less~~, the  
33 registrar, if the award is made pursuant to section 32-1154, or the court  
34 shall deduct the amount recovered from other sources from the amount payable  
35 ~~upon the claim~~ OF ACTUAL DAMAGES SUFFERED PURSUANT TO SECTION 32-1132,  
36 SUBSECTION A and direct the difference, NOT TO EXCEED THIRTY THOUSAND  
37 DOLLARS, to be paid from the fund.

38 F. On receipt of a certified copy of the order specified in subsection  
39 E of this section, the registrar may authorize payment from the residential  
40 contractors' recovery fund even if an appeal has been instituted but not  
41 completed.

1       Sec. 5. Section 32-1139, Arizona Revised Statutes, is amended to read:  
2       32-1139. Liability of fund for each residential contractor's  
3       license; suspension of license; repayment

4       A. The liability of the fund shall not exceed one TWO hundred thousand  
5 dollars for any one residential contractor's license. If claims against the  
6 fund on behalf of any one residential contractor's license exceed one TWO  
7 hundred thousand dollars, the claims shall be paid in order of the date of  
8 entry of the order of the registrar or court, and the registrar or a court  
9 entering an order for payment after the sum of one TWO hundred thousand  
10 dollars has been paid from the fund shall modify the order indicating that  
11 no further recovery from the fund shall be allowed.

12       B. If any amount is paid from the fund in settlement of a claim  
13 arising from the act, representation, transaction or conduct of a residential  
14 contractor, the license of the contractor shall be automatically suspended  
15 by operation of law until the amount paid from the fund is repaid in full,  
16 plus interest at the rate of ten per cent a year. Any person who is or was,  
17 at the time of the act or omission, named on a license that has been  
18 suspended because of a payment from the recovery fund is not eligible to  
19 receive a new license or retain another existing license that also shall be  
20 suspended by operation of law, nor shall any suspended license be  
21 reactivated, until the amount paid from the fund is repaid as provided in  
22 this subsection.

23       Sec. 6. Section 32-1152, Arizona Revised Statutes, is amended to read:  
24       32-1152. Bonds

25       A. Before granting an original contractor's license, the registrar  
26 shall require of the applicant a surety bond in a form acceptable to the  
27 registrar or a cash deposit as provided in this section. No contractor's  
28 license may be renewed unless the applicant's surety bond or cash deposit is  
29 in full force and effect.

30       B. The bonds, or the cash deposit as provided in this section, shall  
31 be in the name of the licensee in amounts fixed by the registrar with the  
32 following schedules after giving due consideration to the volume of work and  
33 the classification contemplated by the applicant:

34       1. General commercial building contractors and subclassifications of  
35 general commercial contractors shall furnish a surety bond or cash deposit  
36 in an amount which shall be determined as follows:

37       (a) If the estimated annual volume of construction work of the  
38 applicant is ten million dollars or more, the applicant shall furnish a  
39 surety bond or cash deposit of not less than fifty thousand dollars or more  
40 than one hundred thousand dollars.

41       (b) If the estimated annual volume of construction work of the  
42 applicant is more than five million dollars and less than ten million  
43 dollars, the applicant shall furnish a surety bond or cash deposit of not  
44 less than thirty-five thousand dollars or more than seventy-five thousand  
45 dollars.

1 (c) If the estimated annual volume of construction work of the  
2 applicant is more than one million dollars and less than five million  
3 dollars, the applicant shall furnish a surety bond or cash deposit of not  
4 less than fifteen thousand dollars or more than fifty thousand dollars.

5 (d) If the estimated annual volume of construction work of the  
6 applicant is more than five hundred thousand dollars and less than one  
7 million dollars, the applicant shall furnish a surety bond or cash deposit  
8 of not less than ten thousand dollars or more than twenty-five thousand  
9 dollars.

10 (e) If the estimated annual volume of construction work of the  
11 applicant is more than one hundred fifty thousand dollars and less than five  
12 hundred thousand dollars, the applicant shall furnish a surety bond or cash  
13 deposit of not less than five thousand dollars or more than fifteen thousand  
14 dollars.

15 (f) If the estimated annual volume of construction work of the  
16 applicant is less than one hundred fifty thousand dollars, the applicant  
17 shall furnish a surety bond or cash deposit of five thousand dollars.

18 2. Specialty commercial contractors shall furnish a surety bond or  
19 cash deposit in an amount which shall be determined as follows:

20 (a) If the estimated annual volume of construction work of the  
21 applicant is ten million dollars or more, the applicant shall furnish a  
22 surety bond or cash deposit of not less than thirty-seven thousand five  
23 hundred dollars or more than fifty thousand dollars.

24 (b) If the estimated annual volume of construction work of the  
25 applicant is more than five million dollars and less than ten million  
26 dollars, the applicant shall furnish a surety bond or cash deposit of not  
27 less than seventeen thousand five hundred dollars or more than thirty-seven  
28 thousand five hundred dollars.

29 (c) If the estimated annual volume of construction work of the  
30 applicant is more than one million dollars and less than five million  
31 dollars, the applicant shall furnish a surety bond or cash deposit of not  
32 less than seven thousand five hundred dollars or more than twenty-five  
33 thousand dollars.

34 (d) If the estimated annual volume of construction work of the  
35 applicant is more than five hundred thousand dollars and less than one  
36 million dollars, the applicant shall furnish a surety bond or cash deposit  
37 of not less than five thousand dollars or more than seventeen thousand five  
38 hundred dollars.

39 (e) If the estimated annual volume of construction work of the  
40 applicant is more than one hundred fifty thousand dollars and less than five  
41 hundred thousand dollars, the applicant shall furnish a surety bond or cash  
42 deposit of not less than two thousand five hundred dollars or more than seven  
43 thousand five hundred dollars.

44 (f) If the estimated annual volume of construction work of the  
45 applicant is less than one hundred fifty thousand dollars, the applicant

1 shall furnish a surety bond or cash deposit of two thousand five hundred  
2 dollars.

3 3. The total amount of the surety bond or cash deposit required of a  
4 licensee who holds more than one license under paragraphs 1 and 2 of this  
5 subsection shall be the sum of the surety bond or cash deposit required for  
6 each license based on the estimated annual volume of construction work of the  
7 applicant allocated to and performed under each license. The applicant at  
8 his option may post a single surety bond or cash deposit which shall be the  
9 sum of the bonds or deposits determined under this subsection for all such  
10 licenses.

11 4. General dual licensed contractors and subclassifications of general  
12 dual licensed contractors shall furnish a single surety bond or cash  
13 deposit with amounts for each classification of license that are determined  
14 based on the volume of commercial work as determined under paragraph 1 of  
15 this subsection and the volume of residential work as determined under  
16 paragraph 5 of this subsection. Liability under the bond or cash deposit  
17 shall be limited to the amount established for each commercial or residential  
18 license and is subject to the limitations and requirements set forth in  
19 subsection E of this section.

20 5. General residential contractors and subclassifications of general  
21 residential contractors shall furnish a surety bond or cash deposit in an  
22 amount of not more than fifteen thousand dollars and not less than five  
23 thousand dollars.

24 6. Specialty dual licensed contractors shall furnish a single surety  
25 bond or cash deposit with amounts for each classification of license that are  
26 determined based on the volume of commercial work as determined under  
27 paragraph 2 of this subsection and the volume of residential work as  
28 determined under paragraph 7 of this subsection. Liability under the bond  
29 or cash deposit shall be limited to the amount established for each  
30 commercial or residential license and is subject to the limitations and  
31 requirements set forth in subsection E of this section.

32 7. Specialty residential contractors shall furnish a surety bond or  
33 cash deposit in an amount of not more than seven thousand five hundred  
34 dollars and not less than one thousand dollars.

35 8. Dual licensed swimming pool contractors and residential swimming  
36 pool general contractors shall furnish a surety bond or cash deposit in the  
37 same amounts based on the volume of work as determined under paragraph 1 of  
38 this subsection for a general commercial contractor.

39 C. Dual licensed contractors and residential contractors shall also  
40 either:

41 1. Furnish an additional surety bond or cash deposit in the amount of  
42 one TWO hundred thousand dollars solely for actual damages suffered by  
43 persons injured as described in section 32-1131. This bond shall be subject  
44 to the limitations on the amounts that may be awarded to individual claimants  
45 as established in section 32-1132.

1           2. Participate in the residential contractors' recovery fund and pay  
2 the assessment prescribed by section 32-1132.

3           D. The surety bonds shall be executed by the contractor as principal  
4 with a corporation duly authorized to transact surety business in this  
5 state. Evidence of a surety bond shall be submitted to the registrar in a  
6 form acceptable to the registrar. The contractor may in the alternative  
7 establish a cash deposit in the amount of the bond with the state treasurer  
8 in accordance with rules adopted by the registrar. Such cash bond monies  
9 shall be deposited, pursuant to sections 35-146 and 35-147, in the  
10 contractors' cash bond fund. The state treasurer shall invest and divest  
11 monies in the fund as provided by section 35-313, and monies earned from  
12 investment shall be credited to the state general fund. Such cash deposits  
13 may be withdrawn, if there are no outstanding claims against them, two years  
14 after the termination of the license in connection with which the cash is  
15 deposited. The cash deposit may be withdrawn two years after the filing of  
16 a commercial surety bond as a replacement to the cash deposit.

17           E. The bonds or deposit required by subsection B of this section shall  
18 be for the benefit of and shall be subject to claims by the registrar of  
19 contractors for failure to pay any sum required pursuant to this  
20 chapter. The bond or deposit required by subsection B, paragraphs 1, 2 and  
21 3 of this section is for the benefit of and subject to claims by a licensee  
22 under this chapter or a lessee, owner or co-owner of nonresidential real  
23 property including, but not limited to, a tenant in common or joint tenant,  
24 or their successors in interest, who has a direct contract with the licensee  
25 against whose bond or deposit the claim is made and who is damaged by the  
26 failure of the licensee to build or improve a structure or appurtenance on  
27 that real property at the time the work was performed in a manner not in  
28 compliance with the requirements of any building or construction code  
29 applicable to the construction work under the laws of this state or any  
30 political subdivision, or if no such code was applicable, in accordance with  
31 the standards of construction work approved by the registrar. The  
32 residential bond or deposit required by subsection B, paragraphs 4 through  
33 8 of this section is for the benefit of and subject to claims by any person  
34 furnishing labor, materials or construction equipment on a rental basis used  
35 in the direct performance of a construction contract involving a residential  
36 structure or by persons injured as defined in section 32-1131. The bond or  
37 deposit required by subsection C, paragraph 1 of this section is for the  
38 benefit of and is subject to claims only by persons injured as described in  
39 section 32-1131. The person seeking recovery from the bond or cash deposit  
40 shall maintain an action at law against the contractor if claiming against  
41 the cash deposit or against the contractor and surety if claiming against the  
42 surety bond. If the person seeking recovery is required to give the notice  
43 pursuant to section 33-992.01, he is entitled to seek recovery only if he has  
44 given such notice and has made proof of service. The surety bond or cash  
45 deposit shall be subject to claims until the full amount thereof is



1 exhausted. The court may award reasonable attorney's fees in a judgment  
2 against a contractor's surety bond or cash deposit. No suit may be commenced  
3 on the bond or for satisfaction from the cash deposit after the expiration  
4 of two years following the commission of the act or delivery of goods or  
5 rendering of services on which the suit is based, except that time for  
6 purposes of claims for fraud shall be measured as provided in section  
7 12-543. The surety bond or cash deposit shall be continuous in form and  
8 shall be conditioned so that the total aggregate liability of the surety or  
9 cash deposit for all claims, including reasonable attorney's fees, shall be  
10 limited to the face amount of the surety bond or cash deposit irrespective  
11 of the number of years the bond or cash deposit is in force. If the  
12 corporate surety desires to make payment without awaiting court action, the  
13 amount of any bond filed in compliance with this chapter shall be reduced to  
14 the extent of any payment or payments made by the corporate surety in good  
15 faith thereunder. Any such payments shall be based on priority of written  
16 claims received by the corporate surety prior to court action. If more than  
17 one cash deposit exists, the judgment against the contractor shall state  
18 which cash deposit shall be used to satisfy the judgment. A certified copy  
19 of the judgment shall then be filed with the registrar, and such judgment  
20 shall specify that it may be satisfied from the contractor's cash  
21 deposit. Priority for payment shall be based upon the time of filing with  
22 the registrar. Upon receipt of a certified copy of the judgment, the  
23 registrar may authorize payment from the cash deposit of the amount claimed  
24 or of whatever lesser amount remains on file. In any action against a cash  
25 deposit, the claimant, at the time of filing suit, may notify the registrar  
26 in writing of the action against the cash deposit, but shall not name as a  
27 defendant in the action the registrar, the treasurer, or the state. Failure  
28 to so notify the registrar at the time of filing suit may result in the cash  
29 deposit being withdrawn by the licensee prior to judgment pursuant to  
30 subsection D of this section.

31 F. When a corporate surety cancels a bond, the surety shall not less  
32 than thirty days prior to the effective date of the cancellation give the  
33 principal and the registrar a written notice of the cancellation. Notice to  
34 the principal shall be by certified mail in a sealed envelope with postage  
35 fully prepaid. Proof of notice to the principal shall be made available to  
36 the registrar on request. On reduction or depletion of the cash deposit, the  
37 registrar shall immediately notify the licensee of said reduction or  
38 depletion and that the licensee must replenish the cash deposit or furnish  
39 a surety bond on or before thirty days from the date of said reduction or  
40 depletion or the contractor's license shall be suspended on the thirtieth day  
41 without further notice or hearing. Notice to the contractor shall be by  
42 certified mail in a sealed envelope with postage fully prepaid thereon,  
43 addressed to the contractor's latest address of record in the registrar's  
44 office. The contractor's license shall be suspended by operation of law on  
45 the date the bond is canceled or thirty days from the date of reduction or

1 depletion of the cash deposit unless a replacement bond or cash deposit is  
2 on file with the registrar.

3 G. The registrar and the state treasurer shall have no personal  
4 liability for the performance of duties relating to the bonds, cash deposits,  
5 certificates of deposit, investment certificates or share accounts required  
6 or permitted by this chapter as long as such duties are performed in good  
7 faith.

8 H. In the following instances the registrar, after a hearing, may  
9 require, as a condition precedent to issuance, renewal, continuation or  
10 removal of suspension of a license, a surety bond or cash deposit in an  
11 amount and duration to be fixed by the registrar based upon the seriousness  
12 of the violations, which shall be not more than ten times the amount required  
13 by subsection B of this section:

14 1. When a license of either the applicant or the qualifying party has  
15 been suspended or revoked or a surety bond or cash deposit requirement has  
16 been increased under section 32-1154 previously as the result of disciplinary  
17 action for a violation of this chapter.

18 2. When either the applicant or qualifying party was an officer,  
19 member, partner or qualifying party for a licensee at any time during which  
20 cause for disciplinary action occurred resulting in suspension or revocation  
21 of such licensee's license and such applicant or qualifying party had  
22 knowledge of or participated in the act or omission which was the cause of  
23 such disciplinary action for a violation of this chapter.

24 3. The bonds required by this subsection shall be in addition to any  
25 other bond or cash deposit required by this chapter or any other bond  
26 required of a contractor by an owner or any other contracting party on any  
27 contract undertaken by him pursuant to the authority of such license.

28 Sec. 7. Section 32-1154, Arizona Revised Statutes, is amended to read:

29 32-1154. Grounds for suspension or revocation of license;  
30 continuing jurisdiction; civil penalty; recovery  
31 fund award

32 A. The holder of a license or any person listed on a license pursuant  
33 to this chapter shall not commit any of the following acts or omissions:

34 1. Abandonment of a contract or refusal to perform after submitting  
35 a bid on work without legal excuse for the abandonment or refusal.

36 2. Departure from or disregard of plans or specifications or any  
37 building codes of the state or any political subdivision of the state in any  
38 material respect which is prejudicial to another without consent of the owner  
39 or the owner's duly authorized representative and without the consent of the  
40 person entitled to have the particular construction project or operation  
41 completed in accordance with such plans and specifications and code.

42 3. Violation of any rule adopted by the registrar.

43 4. Failure to comply with the statutes or rules governing social  
44 security, workers' compensation or unemployment insurance.

1       5. Failure to pay income taxes, withholding taxes or any tax imposed  
2 by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the  
3 licensed business.

4       6. Misrepresentation of a material fact by the applicant in obtaining  
5 a license.

6       7. The doing of a wrongful or fraudulent act by the licensee as a  
7 contractor resulting in another person being substantially injured.

8       8. Conviction of a felony.

9       9. Failure in a material respect by the licensee to complete a  
10 construction project or operation for the price stated in the contract, or  
11 in any modification of the contract.

12       10. Aiding or abetting a licensed or unlicensed person to evade this  
13 chapter, knowingly combining or conspiring with a licensed or unlicensed  
14 person, allowing one's license to be used by a licensed or unlicensed person  
15 or acting as agent, partner, associate or otherwise of a licensed or  
16 unlicensed person with intent to evade this chapter.

17       11. Failure by a licensee or agent or official of a licensee to pay  
18 monies in excess of seven hundred fifty dollars when due for materials or  
19 services rendered in connection with the licensee's operations as a  
20 contractor when the licensee has the capacity to pay or, if the licensee  
21 lacks the capacity to pay, when the licensee has received sufficient monies  
22 as payment for the particular construction work project or operation for  
23 which the services or materials were rendered or purchased.

24       12. Failure of a contractor to comply with any safety or labor laws or  
25 codes of the federal government, state or political subdivisions of the  
26 state.

27       13. Failure in any material respect to comply with this chapter.

28       14. Knowingly entering into a contract with a contractor for work to  
29 be performed for which a license is required with a person not duly licensed  
30 in the required classification.

31       15. Acting in the capacity of a contractor under any license issued  
32 under this chapter in a name other than as set forth upon the license.

33       16. False, misleading or deceptive advertising whereby any member of  
34 the public may be misled and injured.

35       17. Knowingly contracting beyond the scope of the license or licenses  
36 of the licensee.

37       18. Contracting or offering to contract or submitting a bid while the  
38 license is under suspension or while the license is on inactive status.

39       19. Failure to notify the registrar in writing within a period of  
40 fifteen days of any disassociation of the person who qualified for the  
41 license. Such licensee shall have sixty days from the date of such  
42 disassociation to qualify through another person.

43       20. Subsequent discovery of facts which if known at the time of  
44 issuance of a license or the renewal of a license would have been grounds to  
45 deny the issuance or renewal of a license.

1       21. Having a person named on the license who is named on any other  
2 license in this state or in another state which is under suspension or  
3 revocation unless the prior revocation was based solely on a violation of  
4 this paragraph.

5       22. Continuing a new single family residential construction project  
6 with actual knowledge that a pretreatment wood-destroying pests or organisms  
7 application was either:

8           (a) Not performed at the required location.

9           (b) Performed in a manner inconsistent with label requirements, state  
10 law or rules.

11       23. Failure to take appropriate corrective action to comply with this  
12 chapter or with rules adopted pursuant to this chapter without valid  
13 justification within a reasonable period of time after receiving a written  
14 directive from the registrar. The written directive shall set forth the time  
15 within which the contractor is to complete the remedial action. The time  
16 permitted for compliance shall not be less than fifteen days from the date  
17 of issuance of the directive. A license shall not be revoked or suspended  
18 nor shall any other penalty be imposed for a violation of this paragraph  
19 until after a hearing has been held.

20       24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate  
21 or otherwise intimidate any contractor or materialman from serving a  
22 preliminary notice pursuant to section 33-992.01.

23       B. The registrar may on the registrar's own motion, and shall on the  
24 written complaint of any person, investigate the acts of any contractor  
25 within this state and may temporarily suspend, with or without imposition of  
26 specific conditions in addition to increased surety bond or cash deposit  
27 requirements, or permanently revoke any or all licenses issued under this  
28 chapter if the holder of the license issued pursuant to this chapter is  
29 guilty of or commits any of the acts or omissions set forth in subsection A  
30 of this section.

31       C. The expiration, cancellation, suspension or revocation of a license  
32 by operation of law or by decision and order of the registrar or a court of  
33 law or the voluntary surrender of a license by a licensee shall not deprive  
34 the registrar of jurisdiction to proceed with any investigation of or action  
35 or disciplinary proceeding against such licensee, or to render a decision  
36 suspending or revoking such a license, or denying the renewal or right of  
37 renewal of such license.

38       D. The registrar may impose a civil penalty of not to exceed five  
39 hundred dollars on a contractor for each violation of subsection A, paragraph  
40 23 of this section. Civil penalties collected pursuant to this subsection  
41 shall be deposited in the residential contractors' recovery fund. The  
42 failure by the licensee to pay any civil penalty imposed under this  
43 subsection results in the automatic revocation of the license thirty days  
44 after the effective date of the order providing for the civil penalty. No  
45 future license may be issued to an entity consisting of a person associated

1 with the contractor, as defined in section 32-1101, subsection A, paragraph  
2 5, unless payment of any outstanding civil penalty is tendered.

3 E. Notwithstanding any other provisions in this chapter, if a  
4 contractor's license has been revoked or has been suspended as a result of  
5 an order to remedy a violation of this chapter, and the contractor refuses  
6 or is unable to comply with the order of the registrar to remedy the  
7 violation, the registrar may order payment from the residential contractors'  
8 recovery fund to remedy the violation. THE REGISTRAR SHALL SERVE THE  
9 CONTRACTOR WITH A NOTICE SETTING FORTH THE AMOUNT CLAIMED OR TO BE AWARDED.  
10 IF THE CONTRACTOR CONTESTS THE AMOUNT OR PROPRIETY OF THE PAYMENT, THE  
11 CONTRACTOR SHALL RESPOND WITHIN TEN DAYS OF THE DATE OF SERVICE BY REQUESTING  
12 A HEARING TO DETERMINE THE AMOUNT OR PROPRIETY OF THE PAYMENT. FAILURE BY  
13 THE CONTRACTOR TO RESPOND IN WRITING WITHIN TEN DAYS OF THE DATE OF SERVICE  
14 SHALL BE DEEMED A WAIVER BY THE CONTRACTOR OF THE RIGHT TO CONTEST THE AMOUNT  
15 CLAIMED OR TO BE AWARDED. SERVICE MAY BE MADE BY PERSONAL SERVICE TO THE  
16 CONTRACTOR OR BY MAILING A COPY OF THE NOTICE BY REGISTERED MAIL WITH POSTAGE  
17 PREPAID TO THE CONTRACTOR'S LATEST ADDRESS OF RECORD ON FILE IN THE  
18 REGISTRAR'S OFFICE. IF SERVICE IS MADE BY REGISTERED MAIL, IT IS EFFECTIVE  
19 FIVE DAYS AFTER THE NOTICE IS MAILED. Except as provided in section  
20 41-1092.08, subsection H, the contractor or injured person may seek judicial  
21 review of the registrar's final award pursuant to title 12, chapter 7,  
22 article 6.

23 Sec. 8. Title 32, chapter 10, article 3, Arizona Revised Statutes, is  
24 amended by adding section 32-1158.01, to read:

25 32-1158.01. Swimming pool; spa; construction contracts

26 A. IN ADDITION TO THE REQUIREMENTS OF SECTION 32-1158, A LICENSED  
27 CONTRACTOR WHO ENTERS INTO A CONTRACT FOR THE CONSTRUCTION OR INSTALLATION  
28 OF A RESIDENTIAL IN-GROUND SWIMMING POOL OR SPA WITH A PURCHASER WHO RESIDES  
29 IN THE RESIDENCE OR WHO INTENDS TO RESIDE IN THE RESIDENCE AFTER THE  
30 COMPLETION OF THE CONTRACT SHALL INCLUDE AT LEAST THE FOLLOWING PROVISIONS:

31 1. A PROVISION PROVIDING THE PURCHASER THE OPPORTUNITY TO REQUEST  
32 STANDARD CONTRACTOR'S PAYMENT AND PERFORMANCE BONDS IN A FORM APPROVED BY THE  
33 REGISTRAR, SECURING THE COMPLETION OF THE WORK AND PAYMENT FOR SERVICES AND  
34 MATERIALS. THE COST OF THE PAYMENT AND PERFORMANCE BOND SHALL BE PAID BY THE  
35 PURCHASER OF THE SWIMMING POOL OR SPA AND THE CONTRACTOR SHALL NOT CHARGE A  
36 SURCHARGE OR A SERVICE CHARGE.

37 2. THE FOLLOWING PAYMENT PROVISIONS:

38 (a) A DOWN PAYMENT PAYABLE ON THE EXECUTION OF THE CONTRACT OF NOT  
39 MORE THAN ONE THOUSAND DOLLARS.

40 (b) AFTER THE COMPLETION OF THE EXCAVATION WORK ON THE SWIMMING POOL  
41 OR SPA, A PAYMENT OF NOT MORE THAN THIRTY PER CENT OF THE AMOUNT OF THE  
42 ORIGINAL CONTRACT PRICE PLUS ANY WRITTEN CHANGE ORDERS APPROVED BY THE  
43 PURCHASER.

44 (c) AFTER THE INSTALLATION OF STEEL, PLUMBING AND PNEUMATICALLY  
45 APPLIED CONCRETE MATERIALS OR THE INSTALLATION OF A PREFABRICATED SWIMMING

1 POOL OR SPA, A PAYMENT OF NOT MORE THAN THIRTY PER CENT OF THE AMOUNT OF THE  
2 ORIGINAL CONTRACT PRICE PLUS ANY WRITTEN CHANGE ORDERS APPROVED BY THE  
3 PURCHASER.

4 (d) AFTER THE INSTALLATION OF DECKING MATERIALS, A PAYMENT OF NOT MORE  
5 THAN THIRTY PER CENT OF THE AMOUNT OF THE ORIGINAL CONTRACT PRICE PLUS ANY  
6 WRITTEN CHANGE ORDERS APPROVED BY THE PURCHASER.

7 (e) BEFORE THE APPLICATION OF THE FINISHING INTERIOR MATERIALS OR  
8 COMPLETION OF ALL WORK ON A PREFABRICATED POOL OR SPA, PAYMENT OF ALL  
9 REMAINING SUMS DUE ON THE ORIGINAL CONTRACT PLUS ANY WRITTEN CHANGE ORDERS  
10 APPROVED BY THE PURCHASER.

11 3. A PROVISION THAT GIVES NOTICE TO THE PURCHASER, IN A FORM APPROVED  
12 BY THE REGISTRAR THAT IS IN AT LEAST TEN POINT TYPE, OF THE PURCHASER'S RIGHT  
13 TO RECEIVE WRITTEN MATERIAL THAT ADVISES THE PURCHASER OF THE PROVISIONS OF  
14 THIS SECTION AND OF THE PROCEDURES PROVIDED FOR BY THE REGISTRAR FOR THE  
15 RESOLUTION OF CLAIMS AND DISPUTES WITH LICENSED CONTRACTORS.

16 4. A PROVISION IN A FORM APPROVED BY THE REGISTRAR THAT IS IN AT LEAST  
17 TEN POINT TYPE, ADVISING THE PURCHASER OF THE PURCHASER'S RIGHTS UNDER TITLE  
18 44, CHAPTER 15.

19 B. IF A PURCHASER REQUIRES THE CONTRACTOR TO FURNISH A PAYMENT AND  
20 PERFORMANCE BOND SECURING THE PERFORMANCE OF THE CONTRACT, THE PROVISIONS OF  
21 SUBSECTION A, PARAGRAPH 2 OF THIS SECTION MAY BE CHANGED IN ANY MANNER AGREED  
22 TO BY THE PARTIES TO THE CONTRACT.

23 C. ANY CHANGES, ADDITIONS OR DELETIONS TO THE WORK SPECIFIED IN THE  
24 ORIGINAL CONTRACT SHALL BE INCLUDED IN A WRITTEN CHANGE ORDER.

25 D. A CONTRACTOR'S FAILURE TO COMPLY WITH THIS SECTION IS A VIOLATION  
26 OF SECTION 32-1154, SUBSECTION A.

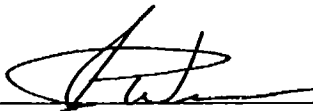
APPROVED BY THE GOVERNOR MAY 6, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2002.

Passed the House April 25, 20 02,

by the following vote: 53 Ayes,

0 Nays, 7 Not Voting

  
Speaker of the House

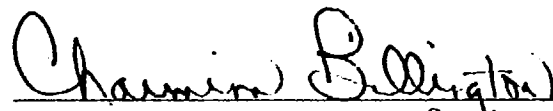
  
Chief Clerk of the House

Passed the Senate March 25, 20 02,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

       day of       , 20       ,

at        o'clock        M.

        
Secretary to the Governor

Approved this        day of

      , 20       ,

at        o'clock        M.

        
Governor of Arizona

S.B. 1399

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this        day of       , 20       ,

at        o'clock        M.

        
Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate April 30, 2002

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Randall Ainsworth  
President of the Senate

Charmian Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

30 day of April, 2002

at 12:48 o'clock P M.

Sandra Channing  
Secretary to the Governor

Approved this 6<sup>th</sup> day of

May, 2002,

at 3:41 o'clock P M.

James I. Frawley  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of May, 2002

at 3:13 o'clock P M.  
Antony D. Taylor  
Secretary of State

S.B. 1399